IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 1388 of 2005

Date of Decision: 11.12.2006

M/s Sharda Ginning Pressing & Oil Mills & Ors. ...Petitioners

Vs.

Smt. Bimla Devi ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.R.S.Mittal, Senior Advocate with
Mr.Atul Gaur, Advocate,
for the petitioners.

Mr.O.P.Goyal Senior Advocate with
Ms.Mamta, Advocate,
for respondents No.1 to 7.

Vinod K.Sharma, J. (Oral)

Present revision petition arises out of an order passed by the learned Civil Judge (Junior Division), Fatehabad dismissing the application moved under Section 8 of the Arbitration and Conciliation Act, 1996 (for short the Act) moved by the petitioners.

A suit was filed by the plaintiff-respondent being the legal representative of late Banwari Lal who was one of the partners of M/s Sharda Ginning Pressing & Oil Mills along with Bhola Ram son of Chandu

Lal, Smt. Nirmal Garg wife of Rattan Chand son of Bhola Ram, Saroj Garg wife of Subhash Chand son of Bhola Ram and Smt. Sharda Garg wife of Parkash son of Bhola Ram. The partnership deed was dated 1.4.1991. Banwari Lal died on 7.11.2002 thereby resulting in dissolution of firm M/s Sharda Ginning Pressing & Oil Mills under Section 42 (c) of the Indian Partnership Act. In the suit, the plaintiff had claimed a relief of dissolution of firm and for separate possession by way of partition of 1/4th share of movable and immovable property and for rendition of account of partnership firm after settlement of account.

On notice having been given the defendants filed an application under Section 8 of the Act seeking stay of the proceedings in the suit for referring the matter to the Arbitrator under Clause 15 of the Partnership Deed which reads as under:

> **"Clause No.15.** That in case of any dispute among the parties with regard to the interpretation of this deed or any other matter relating to the affairs of the firm the same shall be referred to an arbitrator agreed upon among the parties in accordance with the provision of the Indian Arbitration Act."

The said application was contested by the plaintiff-respondent on the plea that the present suit has been filed for dissolution of firm and separate possession by way of partition and rendition of account of defendant No.1 by defendants No.2 to 5 and against defendants No.6 and 7 who were not party to the partnership deed dated 1.4.1991. It was also claimed that the matter was not covered under the alleged arbitration clause. It was also claimed by the plaintiffs in reply to the application that the partnership deed dated 1.4.1991 came to an end with the death of Banwari

Lal and accordingly the arbitration clause also ceased to exist. It was also claimed that M/s Sharda Ginning Pressing & Oil Mills was not a registered firm as such the matter could not be referred to arbitration and the provisions of Section 8 of the Act were not attracted to the facts of the case. It was also claimed that the matter involved in the present suit could only be decided by the Civil Court and there was no need to refer the matter to the Arbitrator. It was also claimed that as the petitioners had sought adjournment for filing the written statement, they were estopped from raising the plea of referring the matter to the Arbitrator. No reply was filed on behalf of the defendants No.6 and 7 in the suit as they had already filed written statement on 25.1.2005. In support o the application the petitioners placed reliance on the law laid down in **Parampal Singh Vs. Punjab State Warehouse Corporation, Chandigarh and others 2000 (1) Punjab Law Reporter 347, Union of India Vs. Smt. Lajwant Kaur 2003 (2) RCR (Civil) 124, Bharat Petrolium Corporation Ltd. Vs. Prem Chand 2001 (2) Civil Court Cases 659, Ashokan Vs. Jayan 1998 (2) Civil Court Cases 168, Hindustan Petrolium Corporation Ltd. Vs. M/s Pink City Mid Way Petrolium 2004 ICC 492, P.Anand Gajapati Raju and others Vs. PVG Raju(dead) and others SCC 539.**

On the other hand the plaintiff-respondent contended that as the suit is for dissolution of firm and for rendition of account of defendant No.1 by defendants No.2 to 5 the same could only be decided by the Civil Court and not by the Arbitrator. Learned senior counsel for the plaintiff further contended that defendants No.6 and 7 were not party to the agreement of partnership dated 1.4.1991 and therefore, the matter could not be referred to the arbitration and in support of his contention reliance was

placed on the law laid down in **Sukanya Holding Pvt. Ltd. Vs. Jayesh H.Pandya and other 2004 (1) RCJ 5, M/s Makar Cotton Mills Vs. Harminder Singh 2001 (1) Civil and Rent Judicial Reports 428, H.C.Chopra Vs. V.C.Mehra 1999 (4) RCR (Civil) 497. Additional Chief Engineer and others Vs. M/s S.P.Chopra and company and others 2000 (3) RCR (Civil) 76, Om Parkash Vs. M/s Usha Rani 2002 (1) RCR (Civil) 437, M/s Jagdish Rai and others Vs. Jagdish Raj and others 2002 (4) RCR 379 Smt. Surdan Chopra Vs. Company Law Board 2003 (3) RCR (Civil) 183 Narender Singh Randhava and other Vs. Hardyal Singh Dhillo and others 1985 (2) PLR 422.**

The learned Trial Court took note of the fact that as the defendants No.6 and 7 were not party to the agreement of partnership and therefore, no arbitrator could be appointed to decide the dispute amongst the parties. The learned Trial Court placed reliance on the judgment of Hon'ble Supreme Court in **Sukanya Holding Pvt. Ltd.** to come to the conclusion that the application deserves to be dismissed as defendants No.6 and 7 could not be referred to arbitration as they were not the parties to the agreement of partnership deed dated 1.4.1991. The learned Trial Court also placed reliance on **Narender Singh Randhawa's case** (supra) to reject the contention raised by the petitioner and accordingly dismissed the application.

Mr. R.S.Mittal, learned senior counsel appearing for the petitioners by placing reliance on the judgment of Hon'ble Supreme Court in the case of **P.Anand Gajapathi Raju and others Vs. P.V.G.Raju (dead) and others 2000 (4) SCC 539** and **Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums (2003) 6 Supreme Court Cases 503**

contended that where there is an arbitration clause then the Court has a mandatory duty to refer the dispute arising between the contracting parties to arbitrator and the Civil Court has no jurisdiction to continue with the suit once an application under Section 8 has been made.

On the other hand Shri O.P.Goyal, learned senior counsel appearing for the plaintiff-respondent placed reliance on the judgment of this Court in **Narender Singh Randhava and other Vs. Hardyal Singh Dhillo and others 1985 (2) PLR 422** to contend that where the partnership deed provided for settlement of dispute through the arbitration, the dissolution and rendition of accounts sought on the basis of justice and equity the matter can be gone into only by the Civil Court and the dispute could not be gone into by the arbitrator.

The learned senior counsel for the respondent thereafter placed reliance on the judgment of this Court in **M/s Makkar Cotton Mills Vs. Harmander Singh 2001 (1) Civil Court Cases 656** to contend that when a sit for dissolution of partnership deed and rendition of account is filed the case is required to be adjudicated by the court itself and not by the Arbitrator. In the said case reliance by this Court was placed on the judgment of Hon'ble Supreme Court in the case of **Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd. 1999 (3) RCR (Civil) 619.**

Learned Senior Counsel for the plaintiff-respondent thereafter placed reliance on the judgment of Delhi High Court in **Om Parkash Vs. Mrs. Usha Rani 2002 (1) RCR (Civil) 437** to contend that an application for reference of dispute to the arbitrator by a partner is not competent in view of the bar under Section 69 of the Partnership Act, 1932 and the only remedy to the partners is to file a suit for rendition of account and

dissolution of partnership deed.

The learned counsel thereafter placed reliance on the judgment of this Court in the case of **Addl.Chief Engineer and others Vs. M/s S.P.Chopra and Co. and other 2000 (3) RCR (Civil) 76** to contend that when a firm is not registered then the partners of unregistered firm cannot apply under Section 8 of the Act to enforce the right arising from the contract between the partners as the proceedings would be barred under section 69 of the Partnership Act. Learned senior counsel for the respondent thereafter relied upon the judgment of Delhi High Court in **Col.H.C.Chopra (retired) Vs. V.C.Mehra 1999 (4) RCR (Civil) 497** to contend that an application under section 8 (1) of the Act is not competent in a suit for dissolution of an unregistered firm and for rendition of account. Learned senior counsel for the plaintiff-respondent then submitted that in view of the judgment in **Sukanya Holding Pvt. Ltd.'s case** (supra) the learned Trial Court was right in coming to the conclusion that the parties could not be referred to arbitration as defendants No.6 and 7 were not parties to the arbitration agreement.

In reply to this contention, learned senior counsel for the petitioners contended that the objection of the petitioners that the application was not maintainable under section 69 of the Partnership Act cannot be sustained as it bars the filing of a suit by or on behalf of any person suing as partner in the firm unless the firm is registered. Learned counsel for the petitioners states that this argument went against the respondent-plaintiff as the suit for dissolution of firm and rendition of account of firm was not competent. The contention of the learned counsel for the petitioner was that if in view of the provisions of section 69 (3) of

the Partnership Act a ban imposed on the institution of suit against unregistered firm for its dissolution and for rendition of account is competent then it cannot be said that the application under section 8 of the Act would not be competent.

I have considered the arguments raised by the learned counsel for the parties and find no force in the contention raised by the learned counsel for the petitioners.

It is not in dispute that defendants No.6 and 7 are not parties to the agreement of partnership deed dated 1.4.1991 and therefore, the matter did not fall within the ambit of arbitration clause No.15 referred to above. The learned Trial Court was right in coming to the conclusion that in view of judgment of Hon'ble Supreme Court in **Sukanya Holding's** case (supra) the matter cannot be referred to the arbitration. The suit should be in respect of a matter which the parties have agreed to refer and which comes within the ambit of arbitration agreement. When a suit is commenced as to a matter which lies outside the arbitration agreement and is also between the some of the parties who are not parties to the arbitration agreement, there is no question of moving application under Section 8 as the word “matter” referred to in Section 8 indicates the entire subject-matter of the suit should be subject-matter of arbitration agreement. Not only this, it has been held by this Court in the case of **M/s Makkar Cotton Mills' case** (supra) by relying upon the judgment of Hon'ble Supreme Court in **Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd. 1999 (3) RCR (Civil) 619** that the suit for dissolution of partnership and rendition of account has to be adjudicated by the civil court itself and not by the arbitrator. In view of this authoritative pronouncement, the learned Trial

Court was right in rejecting the application.

Accordingly, there is no merit in the present revision petition, which is accordingly dismissed.

(Vinod K.Sharma)
Judge

December 11,2006
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